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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

IN RE:)	
)	DOCKET NO. FIFRA-09-2004-0023
PANG & SON DISTRIBUTION, L.L.C.,)	
)	COMPLAINT AND NOTICE OF
RESPONDENT.)	OPPORTUNITY FOR HEARING
_____)	

PRELIMINARY STATEMENT

This is a civil administrative enforcement action instituted pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA" or the "Act"), as amended, 7 U.S.C. §§ 136 et seq. Complainant is the Director, Cross Media Division, United States Environmental Protection Agency ("EPA"), Region 9. The EPA Administrator delegated the authority to institute this action to Complainant (EPA Delegation Order 5-14; EPA Regional Order 1255.08). Respondent is Pang & Son Distribution, L.L.C. ("Respondent"). This Complaint and Notice of Opportunity for Hearing ("Complaint") serves as notice that Complainant has reason to believe that Respondent

violated Section 12 of FIFRA, 7 U.S.C. § 136j.

GENERAL ALLEGATIONS

A. Pesticide Registration History

1. "Frontline Top Spot for Dogs" (EPA Registration Number 65331-3), "Frontline Top Spot for Cats" (EPA Registration Number 65331-2), "Frontline Plus for Dogs" (EPA Registration Number 65331-5), and "Frontline Plus for Cats" (EPA Registration Number 65331-4) are EPA-registered pesticides sold in the United States as a topical flea and tick treatment for dogs and cats.
2. Merial, Limited ("Merial") is the registrant for these pesticides, which owns the registered trademark "Frontline," and produces "Frontline" products at its registered establishments in France (EPA Establishment Number 65331-FR-2), Germany (EPA Establishment Number 65331-DEU-1), and State of Georgia (EPA Establishment Number 65331-GA-1), for sale within the United States.
3. "Frontline Top Spot for Dogs" is distributed in four sizes for dogs (0-22 (pounds ("lbs.))); 23-44 lbs.; 45-88 lbs.; and 89-132 lbs.). "Frontline Top Spot for Cats" is distributed in one size. "Frontline Plus for Dogs" is distributed in four sizes for dogs (11-22 lbs.; 23-44 lbs.; 45-88 lbs.; and 89-132 lbs.). "Frontline Plus for Cats" is distributed in one size.
4. The EPA-accepted labeling for the registration of "Frontline Top Spot for Dogs" and "Frontline Top Spot for Cats" states that the products "[k]ill. . . fleas and ticks."
5. The EPA-accepted labeling for the registration of "Frontline Plus for Dogs" and "Frontline Plus for Cats" states that the products "[k]ill. . . fleas, flea eggs, and ticks."
6. The EPA-accepted labeling for the registration of "Frontline Top Spot for Dogs,"

“Frontline Top Spot for Cats,” “Frontline Plus for Dogs,” and “Frontline Plus for Cats” consists of:

- A. An outer retail carton bearing directions for use, a statement of ingredients, and other information.
- B. A pamphlet insert bearing directions for use.
- C. A reapplication card.
- D. A child resistant blister package containing either three or six product applicators.

Each product applicator bears, among other information:

- i. the product name;
 - ii. the size of the product in U.S. customary units of volume (i.e., fluid ounces);
 - iii. name and percentage by weight of active ingredient;
 - iv. EPA registration number;
 - v. reference statement referring users to the main labeling on the outer cartons; and
 - vi. company name and lot number.
7. “Advantage 10 for Dogs” (for dogs weighing 10 lbs. or less)(EPA Registration Number 11556-117); “Advantage 20 for Dogs” (for dogs weighing 11-20 lbs.)(EPA Registration Number 11556-19); “Advantage 55 for Dogs” (for dogs weighing 21-55 lbs.)(EPA Registration Number 11556-120); “Advantage 100 for Dogs” (for dogs weighing over 55 lbs.)(EPA Registration Number 11556-122); “Advantage 9 for Cats” (for cats weighing 9 lbs. or less)(EPA Registration Number 11556-116); and “Advantage 18 for Cats” (for cats weighing over 9 lbs.)(EPA Registration Number 11556-118) are EPA-registered

pesticides sold in the United States as a topical flea treatment for dogs and cats.

8. Bayer Corporation ("Bayer") is the registrant of these pesticides, which owns the registered trademark "Advantage," and produces these pesticides at its registered establishment in Germany (EPA Establishment Number 11556-DEU-1) for sale within the United States.
9. The EPA-accepted labeling for the registration of "Advantage" products states that the products "[k]ill. . . fleas."
10. The EPA-accepted labeling for the registration of "Advantage" products consists of:
 - A. An outer retail carton bearing directions for use, a statement of ingredients, and other information.
 - B. A pamphlet insert bearing directions for use (except "Advantage 18 for Cats").
 - C. A blister package containing four product tubes. Each product tube bears, among other information:
 - i the product name;
 - ii. name and percentage by weight of active ingredient;
 - iii. contents by volume;
 - iv. EPA registration number;
 - v. signal word ("WARNING");
 - vi. child hazard warning ("KEEP OUT OF REACH OF CHILDREN");
 - vii. reference statement referring users to the main labeling on the outer cartons; and
 - viii. company name and lot number.

B. Sale/Distribution of "Advantage" and "Frontline" Products

11. Respondent is a Hawaii corporation and therefore a "person" as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s).
12. Respondent owns, operates, controls or is otherwise responsible for a place of business located at 1414 Alexander Street, #201, Honolulu, Hawaii (the "Facility").
13. Beginning in or around 2001, Respondent purchased counterfeit outer retail cartons of "Frontline" and "Advantage" products registered for sale in the United States from printers in China and Taiwan.
14. Beginning in or around 2001, Respondent imported "Frontline" and "Advantage" product blister packages (i.e., the topical chemical or flea treatment product excluding the foreign marked boxes) from various foreign distributors.
15. Beginning in or around 2001, Respondent repackaged (produced) "Frontline" and "Advantage" products by placing the foreign labeled blister packages inside the counterfeit outer retail cartons and sold or distributed the repackaged products to various retailers throughout the United States.
16. On or about July 31, 2003, the Bureau of Customs and Border Protection ("Customs") of the Department of Homeland Security seized two international shipments from Taiwan addressed to Respondent.
17. These shipments consisted of 26,000 empty retail cartons displaying the trademark name "Frontline" and 6,000 empty cardboard boxes displaying the trademark name "Advantage."
18. On August 18, 2003, Customs issued a notice to Respondent requesting samples of the products that were to be placed inside the empty retail cartons and the address and location of the manufacturer of the empty retail cartons and the producer of the pesticides to be

inserted in the retail cartons.

19. The samples that Respondent provided to Customs in response to the Custom's notice differed substantially from the EPA-registered "Frontline" products in that they were not sealed in the EPA-approved child resistant blister package; did not contain EPA required statements; listed the ingredients in a foreign metric system; and lacked EPA-required paper label inserts indicating the package contents, warnings, and EPA registration number.
20. In December 2003, the Office of Pesticide Programs ("OPP") of EPA examined copies of samples of the "Advantage" products produced and offered for sale by Respondent and compared them to the EPA-registered products.
21. During December 2003, the samples collected of ADVANTAGE 10 FOR DOGS (0-10 lbs.), ADVANTAGE 20 FOR DOGS (11-20 lbs.), ADVANTAGE 100 FOR DOGS (over 55 lbs.), and ADVANTAGE 18 FOR CATS (10-18 lbs.) contained product tubes bearing labeling substantially different from that found in the EPA-registered products.
22. During December 2003, the samples collected of ADVANTAGE 10 FOR DOGS (0-10 lbs.), ADVANTAGE 20 FOR DOGS (11-20 lbs.), ADVANTAGE 100 FOR DOGS (over 55 lbs.), and ADVANTAGE 18 FOR CATS (10-18 lbs.) consisted of foreign, unregistered product tubes enclosed in counterfeit outer retail cartons bearing labeling identical to the EPA-registered "Advantage" products.
23. In January 2004, OPP examined copies of samples of the "Frontline" products produced and offered for sale by Respondent and compared them to the EPA-registered products.
24. During January 2004, the samples collected of FRONTLINE PLUS FOR DOGS (23-44 lbs.), FRONTLINE PLUS FOR DOGS (45-88 lbs.), and FRONTLINE PLUS FOR DOGS (89-132 lbs.) lacked the child resistant blister packaging for the product tubes.

25. During January 2004, the samples collected of FRONTLINE PLUS FOR DOGS (23-44 lbs.), FRONTLINE PLUS FOR DOGS (45-88 lbs.), and FRONTLINE PLUS FOR DOGS (89-132 lbs.) contained product applicators bearing labeling substantially different from that found in the EPA-registered products, and lacked pamphlet inserts bearing directions for use and other important information.
26. From or about May 2001 through in or about September 2003, Respondent sold or distributed the following products to retailers throughout the United States: (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) ADVANTAGE 18 FOR CATS (10-18 lbs.); (7) FRONTLINE PLUS FOR DOGS (11-22 lbs.); (8) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (9) FRONTLINE PLUS FOR DOGS (45-88 lbs.); (10) FRONTLINE PLUS FOR DOGS (89-132 lbs.); (11) FRONTLINE PLUS FOR CATS; (12) FRONTLINE TOP SPOT FOR DOGS (0-22 lbs.); (13) FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.); (14) FRONTLINE TOP SPOT FOR DOGS (45-88 lbs.); (15) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.); and (16) FRONTLINE TOP SPOT FOR CATS.
27. (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) ADVANTAGE 18 FOR CATS (10-18 lbs.); (7) FRONTLINE PLUS FOR DOGS (11-22 lbs.); (8) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (9) FRONTLINE PLUS FOR DOGS (45-88 lbs.); (10) FRONTLINE PLUS FOR DOGS (89-132 lbs.); (11) FRONTLINE PLUS FOR CATS; (12) FRONTLINE TOP SPOT FOR DOGS (0-22 lbs.); (13) FRONTLINE TOP SPOT FOR

DOGS (23-44 lbs.); (14) FRONTLINE TOP SPOT FOR DOGS (45-88 lbs.); (15) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.); and (16) FRONTLINE TOP SPOT FOR CATS are used to prevent or control fleas and/or ticks on household pets.

28. Fleas and ticks are “insects” and therefore “pests” as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).

29. (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) ADVANTAGE 18 FOR CATS (10-18 lbs.); (7) FRONTLINE PLUS FOR DOGS (11-22 lbs.); (8) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (9) FRONTLINE PLUS FOR DOGS (45-88 lbs.); (10) FRONTLINE PLUS FOR DOGS (89-132 lbs.); (11) FRONTLINE PLUS FOR CATS; (12) FRONTLINE TOP SPOT FOR DOGS (0-22 lbs.); (13) FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.); (14) FRONTLINE TOP SPOT FOR DOGS (45-88 lbs.); (15) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.); and (16) FRONTLINE TOP SPOT FOR CATS are “pesticides” as that term is defined in Section 2(u) of FIFRA, 7 U.S.C.

§ 136(u), in that they are substances or mixtures of substances intended for preventing, destroying, repelling, or mitigating pests.

30. Unless otherwise specifically provided for by FIFRA, no person may distribute, sell, offer for sale, or hold for sale to any person any pesticide that is not registered with the Administrator of EPA. 7 U.S.C. § 136j(a)(1)(A).

31. From or about May 2001 to the present, Respondent had not registered and was not authorized by the registrants to produce: (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.);

(4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) ADVANTAGE 18 FOR CATS (10-18 lbs.); (7) FRONTLINE PLUS FOR DOGS (11-22 lbs.); (8) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (9) FRONTLINE PLUS FOR DOGS (45-88 lbs.); (10) FRONTLINE PLUS FOR DOGS (89-132 lbs.); (11) FRONTLINE PLUS FOR CATS; (12) FRONTLINE TOP SPOT FOR DOGS (0-22 lbs.); (13) FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.); (14) FRONTLINE TOP SPOT FOR DOGS (45-88 lbs.); (15) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.); and (16) FRONTLINE TOP SPOT FOR CATS with EPA.

32. Unless otherwise specifically provided for by FIFRA, no person may distribute, sell, offer for sale, or hold for sale to any person any pesticide that is misbranded. 7 U.S.C.

§ 136j(a)(1)(E).

33. Under FIFRA, a pesticide is "misbranded" if "(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; (B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3) . . . (D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced . . . (F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment; (G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment. . . ." 7 U.S.C. § 136(q).

34. (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) ADVANTAGE 18 FOR CATS (10-18 lbs.); (7) FRONTLINE PLUS FOR DOGS (11-22 lbs.); (8) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (9) FRONTLINE PLUS FOR DOGS (45-88 lbs.); (10) FRONTLINE PLUS FOR DOGS (89-132 lbs.); (11) FRONTLINE PLUS FOR CATS; (12) FRONTLINE TOP SPOT FOR DOGS (0-22 lbs.); (13) FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.); (14) FRONTLINE TOP SPOT FOR DOGS (45-88 lbs.); (15) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.); and (16) FRONTLINE TOP SPOT FOR CATS distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof by Respondent from or about May 2001 through in or about September 2003 were misbranded within the meaning of FIFRA Section 2(q)(1)(B), 7 U.S.C. § 136(q)(1)(B).

COUNTS 1-31: SALE OR DISTRIBUTION OF UNREGISTERED PESTICIDE,
7 U.S.C. § 136j(a)(1)(A).

COUNT 1

35. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
36. On or about May 8, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Centinela Feed & Pet Supplies of Los Angeles, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 2

37. Paragraphs 1 through 34 are realleged and incorporated herein by reference.

38. On or about May 16, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Discount Pet of Lodi, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 3

39. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
40. On or about May 16, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to BlackSmith's Corner of Bellflower, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 4

41. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
42. On or about May 30, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Discount Pet of Lodi, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 5-7

43. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
44. On or about April 21, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 9 FOR CATS (0-9 lbs.); (2) ADVANTAGE 18 FOR CATS (10-18 lbs.); and (3) ADVANTAGE 100 FOR DOGS (over 55 lbs.) to Mini Pet Mart of Grants Pass, Oregon, in violation of Section

12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNT 8

45. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
46. On or about May 5, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.) to City Feed, Inc. of Honolulu, Hawaii, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 9-13

47. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
48. On or about June 23, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); and (5) ADVANTAGE 9 FOR CATS (0-9 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 14-21

49. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
50. On or about August 6, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55

lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (7) FRONTLINE PLUS FOR DOGS (89-132 lbs.); and (8) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 22-24

51. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
52. On or about September 10, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (2) ADVANTAGE 100 FOR DOGS (over 55 lbs.); and (3) ADVANTAGE 9 FOR CATS (0-9 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 25-31

53. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
54. In or about August 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (4) ADVANTAGE 18 FOR CATS (10-18 lbs.); (5) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (6) FRONTLINE PLUS FOR DOGS (45-88 lbs.); and (7) FRONTLINE PLUS FOR DOGS (89-132 lbs.) at the Facility in violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).

COUNTS 32-62: SALE OR DISTRIBUTION OF MISBRANDED PESTICIDE,
7 U.S.C. § 136j(a)(1)(E).

COUNT 32

55. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
56. On or about May 8, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Centinela Feed & Pet Supplies of Los Angeles, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNT 33

57. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
58. On or about May 16, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Discount Pet of Lodi, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNT 34

59. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
60. On or about May 16, 2001, Respondent distributed, sold, offered for sale, held for sale, offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to BlackSmith's Corner of Bellflower, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNT 35

61. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
62. On or about May 30, 2001, Respondent distributed, sold, offered for sale, held for sale,

offered to deliver in commerce or some combination thereof ADVANTAGE 18 FOR CATS (10-18 lbs.) to Discount Pet of Lodi, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNTS 36-38

63. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
64. On or about April 21, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 9 FOR CATS (0-9 lbs.); (2) ADVANTAGE 18 FOR CATS (10-18 lbs.); and (3) ADVANTAGE 100 FOR DOGS (over 55 lbs.) to Mini Pet Mart of Grants Pass, Oregon, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNT 39

65. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
66. On or about May 5, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof FRONTLINE TOP SPOT FOR DOGS (23-44 lbs.) to City Feed, Inc. of Honolulu, Hawaii, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNTS 40-44

67. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
68. On or about June 23, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2)

ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); and (5) ADVANTAGE 9 FOR CATS (0-9 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNTS 45-52

69. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
70. On or about August 6, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 55 FOR DOGS (23-55 lbs.); (4) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (5) ADVANTAGE 9 FOR CATS (0-9 lbs.); (6) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (7) FRONTLINE PLUS FOR DOGS (89-132 lbs.); and (8) FRONTLINE TOP SPOT FOR DOGS (89-132 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNTS 53-55

71. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
72. On or about September 10, 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (2) ADVANTAGE 100 FOR DOGS (over 55 lbs.); and (3) ADVANTAGE 9 FOR CATS (0-9 lbs.) to Pets Plus of Downey, California, in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

COUNTS 56-62

73. Paragraphs 1 through 34 are realleged and incorporated herein by reference.
74. In or about August 2003, Respondent distributed, sold, offered for sale, held for sale, shipped, delivered for shipment, received and delivered, offered to deliver in commerce or some combination thereof (1) ADVANTAGE 10 FOR DOGS (0-10 lbs.); (2) ADVANTAGE 20 FOR DOGS (11-22 lbs.); (3) ADVANTAGE 100 FOR DOGS (over 55 lbs.); (4) ADVANTAGE 18 FOR CATS (10-18 lbs.); (5) FRONTLINE PLUS FOR DOGS (23-44 lbs.); (6) FRONTLINE PLUS FOR DOGS (45-88 lbs.); and (7) FRONTLINE PLUS FOR DOGS (89-132 lbs.) at the Facility in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E).

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), as amended by the Debt Collection Improvement Act of 1996 and the Civil Monetary Penalty Inflation Adjustment Rule (61 Fed. Reg. 69359 (December 31, 1996), 62 Fed. Reg. 13513 (March 20, 1997) and 69 Fed. Reg. 7121 (February 13, 2004)), authorizes the assessment of a civil administrative penalty of up to \$5,500 for each violation of FIFRA on or after January 31, 1997 but prior to March 15, 2004. For purposes of determining the amount of the civil penalty to be assessed, Section 14(a)(4) of FIFRA, 7 U.S.C. § 136l(a)(4), requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Accordingly, Complainant requests that after consideration of these statutory assessment factors, the Administrator assess against Respondent a civil administrative penalty of up to \$5,500 for each violation of the Act set forth above.

OPPORTUNITY TO REQUEST A HEARING

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint.

Under these rules, you have the right to request a hearing. Any request for a hearing must be in writing and must be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California within thirty (30) days of receipt of this Complaint. In the event that you intend to request a hearing to contest any material facts set forth in the Complaint, to dispute the amount of the penalty proposed in the Complaint, or to assert a claim for judgment as a matter of law, you must file a written Answer to this Complaint with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this Complaint. A copy of your Answer should also be sent to:

David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Your Answer should clearly and directly admit, deny, or explain each factual allegation contained in this Complaint with regard to which you have any knowledge. The Answer should state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) a concise statement of the facts which you intend to place at issue in the hearing; and (3) whether a hearing is requested. Hearings held in the assessment of the civil penalties will be conducted in accordance with the provisions of the Administrative Procedures Act, 5 U.S.C.

§§ 551 et seq., and the Consolidated Rules of Practice. 40 C.F.R. Part 22.

If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing under Section 113(d)(2). The proposed penalty shall become due and payable by you without further proceedings sixty (60) days after a final order issued upon default.

SETTLEMENT CONFERENCE

EPA encourages all parties against whom civil penalties are proposed to pursue the possibilities of settlement through informal conferences. Therefore, whether or not you request a hearing, you may confer informally with the Agency concerning the alleged violations or the amount of the proposed penalty. You may wish to appear at the conference yourself or be represented by counsel. If a settlement is reached, it shall be finalized by the issuance of a written Consent Agreement and Final Order by the Regional Judicial Officer, EPA, Region 9. The issuance of such Consent Agreement and Final Order shall constitute a waiver of your right to request a hearing of any matter stipulated to therein.

To explore the possibility of settlement in this matter, address your correspondence to:

David H. Kim
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

His telephone number is (415) 972-3882.

After this Complaint is issued, the Consolidated Rules of Practice prohibit ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the

decision of this case.

Dated at San Francisco, California on this 29 day of September, 2004.

Pamela Cooper, for
Enrique Manzanilla

Director
Cross Media Division
USEPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original and a copy of the foregoing Complaint and Notice of Opportunity for Hearing was hand delivered to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

and that a true and correct copy of the Complaint; the Consolidated Rules of Practice, 40 C.F.R. Part 22; and the FIFRA Enforcement Response Policy were placed in the United States Mail, certified mail, return receipt requested, addressed to the following:

Dirk Julander, Esq.
Julander Brown & Bollard
Two Park Plaza, Suite 450
Irvine, CA 92614
Certified Mail No. 7000 0520 0025 3711 3428

David Pang
Pang & Son Distribution, L.L.C.
1414 Alexander Street, #201
Honolulu, HI 96822
Certified Mail No. 7000 0520 0025 3711 3411

Dated: 10-6-04

By: 

Pesticide Section

USEPA, Region 9



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RECEIPT NO.: 7000 0520 0025 3711 3411

Date: SEP 29 2004

David Pang
Pang & Son Distribution, LLC
1414 Alexander Street, Apt. #201
Honolulu, HI 96822

**Re: Federal Insecticide, Fungicide and Rodenticide Act
Complaint and Notice of Opportunity for Hearing
Docket No. FIFRA-09-2004-0023**

Dear Mr. Pang:

Enclosed is a Complaint and Notice of Opportunity for Hearing concerning violations of the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA") that occurred at the Pang & Son Distribution, LLC ("Pang & Son") facility located in Honolulu, Hawaii. The complaint will allege that Pang & Son has violated Sections 12(a)(1)(A) and 12(a)(1)(E) of FIFRA, 7 U.S.C. §§ 136j(a)(1)(A), (a)(1)(E), by selling and/or distributing unregistered and misbranded pesticide(s). The complaint will seek a civil penalty for these violations.

You should be aware of the part of the Complaint entitled "Opportunity to Request a Hearing." You are required to respond to this Complaint within thirty (30) days of receipt of the Complaint. If you fail to file an Answer to this Complaint with the Regional Hearing Clerk within thirty (30) days of receipt, your failure shall constitute an admission of all facts alleged in the Complaint and a waiver of your right to a hearing. The proposed civil penalty shall become due and payable sixty (60) days after a final order is issued upon default.

Copies of the following rules and regulations are included for your information: 1) the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; and 2) EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act dated July 2, 1990.